

**From:** [LERS, EOIR \(EOIR\)](#)  
**To:** [All of Judges \(EOIR\)](#); [BIA BOARD MEMBERS \(EOIR\)](#); [Stutman, Robin M. \(EOIR\)](#); [BIA ATTORNEYS \(EOIR\)](#); [All of OCIJ JLC \(EOIR\)](#); [BIA TEAM JLC](#); [BIA TEAM P \(EOIR\)](#); [King, Jean \(EOIR\)](#); [Alder Reid, Lauren \(EOIR\)](#); [Berkeley, Nathan \(EOIR\)](#); [Korniluk, Artur \(EOIR\)](#); [Cowles, Jon \(EOIR\)](#); [Bauder, Melissa \(EOIR\)](#); [Vayo, Elizabeth \(EOIR\)](#); [Kaplan, Matthew \(EOIR\)](#); [Lang, Steven \(EOIR\)](#); [Ramirez, Sergio \(EOIR\)](#); [Powell, Karen B. \(EOIR\)](#); [Taufa, Elizabeth \(EOIR\)](#); [Lovejoy, Erin \(EOIR\)](#); [Rodriguez, Bernardo \(EOIR\)](#); [Brazill, Caitlin \(EOIR\)](#); [Wilson, Amelia \(EOIR\)](#); [Sheehey, Kate \(EOIR\)](#)  
**Cc:** [McHenry, James \(EOIR\)](#); [Reilly, Katherine - OGC \(EOIR\)](#); [Santoro, Christopher A \(EOIR\)](#); [Pease, Jeffrey \(EOIR\)](#); [EOIR Library \(EOIR\)](#); [Moutinho, Deborah \(EOIR\)](#)  
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**EXECUTIVE OFFICE FOR  
IMMIGRATION REVIEW**

Office of Policy | Legal Education and  
Research Services Division

**| Policy & Case Law Bulletin**

February 2, 2018

**Federal Agencies**

DOJ

• [BIA Issues Decision in Matter of Siniauskas – EOIR](#)

27 I&N Dec. 207 (BIA 2018)

- (1) In deciding whether to set a bond, an Immigration Judge should consider the nature and circumstances of the alien’s criminal activity, including any arrests and convictions, to determine if the alien is a danger to the community, but family and community ties generally do not mitigate an alien’s dangerousness.
- (2) Driving under the influence is a significant adverse consideration in determining whether an alien is a danger to the community in bond proceedings.

• [BIA Issues Decision in Matter of Castillo Angulo – EOIR](#)

27 I&N Dec. 194 (BIA 2018)

- (1) In removal proceedings arising within the jurisdiction of the United States Courts of Appeals for the Fifth and Ninth Circuits, an alien who was “waved through” a port of entry has established an admission “in any status” within the meaning of section 240A(a)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(a)(2) (2012). *Tula-Rubio v. Lynch*, 787 F.3d 288 (5th Cir. 2015), and *Saldivar v. Sessions*, 877 F.3d 812 (9th Cir. 2017), followed in jurisdiction only.
- (2) In removal proceedings arising outside the Fifth and Ninth Circuits, to establish continuous residence in the United States for 7 years after having been “admitted in any status” under section 240A(a)(2), an alien must prove that he or she possessed some form of lawful immigration status at the time of admission.

• [Virtual Law Library Weekly Update – EOIR](#)

This update includes resources recently added to EOIR’s internal or external Virtual Law Library, including Federal Register Notices, country conditions information, and links to recently-updated immigration law publications.

DOS

- [State Department Revises 9 FAM](#)

On January 24, 2018, the Department of State revised [9 FAM 403.9 \(U\)](#) to clarify standards for limiting nonimmigrant visa validity. On January 26, 2018, the Department of State revised [9 FAM 402.17](#) to require all Canadian citizens to have a passport when entering the United States.

DHS

- [DHS Announces New, Enhanced Security Measures for Refugees Seeking Resettlement in the United States](#)

On January 31, 2018, Secretary of Homeland Security Kirstjen M. Nielsen announced new security enhancements and recommendations that will intensify screening and vetting of persons seeking to enter the United States. The enhancements and recommendations include: additional screening for certain nationals of high-risk countries; administering the USRAP in a more risk-based manner when considering the overall refugee admissions ceiling, regional allocations, and the groups of applicants considered for resettlement; as well as periodic review and update of the refugee high-risk country list and selection criteria.

- [Secretary of Homeland Security Announces 18-Month Extension of TPS for Syria](#)

On January 31, 2018, the Secretary of Homeland Security announced her determination that the TPS designation for Syria was warranted for an additional 18-month period. Syrians with TPS will be eligible to apply for an extension of their status, which is set to expire on September 30, 2019.

- [USCIS Releases Priorities on Affirmative Asylum Interview Scheduling](#)

Beginning on January 29, 2018, the Asylum Division will begin prioritizing the most recently filed affirmative applications in scheduling asylum interviews. First priority will go to applications that were scheduled for an interview, but the interview had to be rescheduled at the applicant's request or the needs of USCIS; second priority will go to applications that have been pending for 21 days or less; and third priority will go to all other pending affirmative asylum applications, which will be scheduled for interviews starting with newer filings and working back towards older filings.

International

UNHCR

- [UNHCR Releases Draft Outlining a New Global Refugee Deal](#)

On January 31, 2018, the UNHCR released a [draft](#) of a new, comprehensive refugee response framework in preparation for formal talks with UN Member States, which will begin on February 13, 2018.

#### First Circuit

- [Perez-Rabanales v. Sessions](#)

No. 17-1803, 2018 WL 563317 (1st Cir. Jan. 26, 2018) (Asylum-PSG; Domestic Violence)

The First Circuit denied the PFR, concluding that the petitioner's proffered social group ("Guatemalan women who try to escape systemic and severe violence but who are unable to receive official protection") was not legally cognizable since it fails to satisfy the particularity and social distinction requirements. The court agreed with the Board in rejecting petitioner's attempted comparison of her proffered social group with that found cognizable in *Matter of A-R-C-G-*, I&N Dec. 388 (BIA 2014), because petitioner's proffered social group is defined by the persecution of its members.

#### Second Circuit

- [Garcia v. Sessions](#)

No. 14-3775, 2018 WL 497201 (2d Cir. Jan. 22, 2018) (unpublished) (Agg Fel; CIMT)

The Second Circuit granted the PFR, vacated the Board's order, and remanded, concluding that petitioner is not removable under section 237(a)(2)(A)(iii) of the Act for his conviction under N.Y.P.L. § 220.31 (criminal sale of a controlled substance) based on the court's prior decision in *Harbin v. Sessions*, 860 F.3d 58 (2d Cir. 2017). The court remanded to the agency to complete a full analysis of whether violations of N.Y.P.L. § 165.15(3) (theft of services) and N.Y.P.L. § 155.25 (petit larceny) are CIMTs. The court also instructed the agency to further consider whether petitioner was convicted under N.Y.P.L. § 120.00(1) (attempted assault in the third degree), and if necessary, whether a conviction under another subsection constitutes a CIMT. Lastly, the court found that petitioner is eligible for a 212(c) waiver for his drug convictions; therefore, if the agency finds that petitioner's other convictions do not constitute two or more CIMTs, the agency must address whether he warrants a 212(c) waiver as a matter of discretion.

- [Ye v. Sessions](#)

No. 16-1594, 2018 WL 580619 (2d Cir. Jan. 29, 2018) (unpublished) (ACF)

The Second Circuit granted the PFR and remanded, concluding that substantial evidence did not support the agency's adverse credibility ruling. The court found that the Board "did not address the reliability of the credible fear interview or otherwise explain how, viewing the totality of the circumstances, [the] discrepancies regarding [the petitioner's]

travel and single inconsistency regarding whether [he] was burned or merely threatened with burning renders the entirety of[ his] claim not credible.”

#### Third Circuit

- [Mondragon-Gonzalez v. Att’y Gen. of U.S.](#)

No. 17-1710, 2018 WL 618467 (3d Cir. Jan. 29, 2018) (unpublished) (Sexual abuse of a minor)

The Third Circuit denied the PFR, concluding that the Board did not err in determining that petitioner is removable because his conviction in violation of 18 Pa. Cons. Stat. § 6318(a)(5) (unlawful contact with a minor) is a crime of child abuse under section 237(a)(2)(E)(i) of the Act.. In doing so, the Court granted Chevron deference to the Board’s interpretation of “child abuse” discussed in *Matter of Velazquez-Herrera*, 24 I&N Dec. 503 (BIA 2008), *Matter of Soram*, 25 I&N Dec. 378 (BIA 2010) and *Matter of Mendoza Osorio*, 26 I&N Dec. 703 (BIA 2016).

#### Seventh Circuit

- [Zhakypbaev v. Sessions](#)

No. 17-1459, 2018 WL 560841 (7th Cir. Jan. 26, 2018) (Asylum-Nexus)

The Seventh Circuit denied the PFR, concluding that the petitioner did not establish that his alleged persecution was on account of his association with the family of the ousted Kyrgyz president, Kurmanbek Bakiev, or his political opinion. The court agreed with the agency that the evidence supported the finding that petitioner was interrogated and beaten because he had information that would be useful in prosecuting individuals for financial crimes rather than because of his connection to the Bakiev family or his political affiliation.

#### Eighth Circuit

- [United States v. Libby](#)

No. 17-1023, 2018 WL 559791 (8th Cir. Jan. 26, 2018) (Crime of Violence)

The Eighth Circuit affirmed the district court’s sentence, concluding that petitioner’s conviction in violation of Minn. Stat. § 609.245, subd. 1 (first degree aggravated robbery) is categorically a violent felony under the elements clause of the ACCA, 18 U.S.C. § 924(e)(2)(B)(i) (same as 18 U.S.C. § 16(a)). In arriving at its conclusion, the court determined that simple robbery under Minn. Stat. § 609.24, a constituent part of the crime defined under Minn. Stat. § 609.245, subd. 1, implicates violent force due to its express requirement that a defendant communicate a threat to “overcome ... resistance” or to “compel acquiescence.”

#### Ninth Circuit

- [C.J.L.G. v. Sessions](#)

No. 16-73801, 2018 WL 576761 (9th Cir. January 29, 2018) (Due Process – Right to Counsel)

The Ninth Circuit denied the PFR, concluding that alien minors do not have a constitutional or statutorily-created categorical right to court-appointed counsel at government expense in removal proceedings. Further, the court found that the INA does not implicitly create a right to appointed counsel. The court also held that the IJ was not obligated to advise petitioner on his potential eligibility for SIJ since eligibility for SIJ is dependent on a state court's findings which had not yet occurred in his case. A detailed summary of this case was included in the January 30, 2018 Policy & Case Law Highlights.

- [Solorio-Ruiz v. Sessions](#)

No. 16-73085, 2018 WL 576709 (9th Cir. January 29, 2018) (Crime of Violence)

The Ninth Circuit granted the PFR in part and remanded, concluding that the petitioner's conviction in violation of Cal. Penal Code § 215(a) (carjacking) categorically does not qualify as a crime of violence under section 101 (a)(43)(F) of the Act because it does not require use of violent force, overruling *Nieves-Medrano v. Holder*, 590 F.3d 1057, 1058 (9th Cir. 2010). A detailed summary of this case was included in the January 30, 2018 Policy & Case Law Highlights.